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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,674	05/09/2001	Akhileswar Ganesh Vaidyanathan	CL-1666USNA	3257

23906 7590 06/29/2005

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EXAMINER

LIN, JERRY

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/851,674

Applicant(s)

VAIDYANATHAN ET AL.

Examiner

Jerry Lin

Art Unit

1631

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 35-53 and 66-68.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see continuation sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

## Continuation of item #3. Note:

Applicants proposed After Final amendments to claims 35, 42, 43, 44, 45, 66, 67, and 68 introduce substantive changes that raise issues that require further search and/or consideration, and therefore will not be entered. Claims 35 and 68 were amended to include "to determine the difference-in-position value between each occurrences of a symbol in one of the sequences and each occurrence of that same symbol in the other sequence in each master offset table". Steps H and I of claim 42 introduce substantive changes to the instant claim. Claim 44 was amended to include "collecting symbols having identical difference-in-position from each row of the Pattern Map". Claim 66 was amended to specify k-tuple data structures instead of generic data structures. The addition of these new limitations into the currently amended claims would require further consideration and/or search.

## Continuation of item #11. Note:

Claims 35-53 and 66-68 remain rejected under 35 U.S.C. §101 for reasons of record. The applicant has re-iterated his position that the symbols in the instant claims represent "things" such as members of an alphabet, which may be represented in print or electronically, or a chemical composition of a protein, an amino acid, or any other physical entity. However, the MPEP states that "If the steps of gathering and substituting values were alone sufficient, every mathematical equation, formula, or algorithm having any practical use would be per se subject to patenting as a 'process' under 101. Consideration of whether the substitution of specific values is enough to convert the disembodied ideas present in the formula into an embodiment of those ideas, or into an application of the formula, is foreclosed by the current state of the law." MPEP §2106 (iv) (B) (2) (b) (ii). Even though the applicant claims these symbols represent things, the mere fact that the symbols are the representation of something else does not sufficiently establish that the claims are statutory. Although the applicants makes the distinction that the instant claims are not drawn to a mathematical equations, it is drawn to a mathematical algorithm, and thus the same analysis applies.

The applicant also brings up the point that the instant application does have an equivalent selection step and refers to the collecting step in claims 35, 42, 44, and 68. However, the claim as written only defines the patterns of the data. There is no actual selecting of data. This is clearly a different process than selecting data.

The rejections under 35 U.S.C. §112 second paragraph are maintained for reasons of record.

The rejections under 35 U.S.C. §103 are maintained for reasons of record.

*Ardin H. Marschel 6/26/05*

**ARDIN H. MARSCHEL**  
**SUPERVISORY PATENT EXAMINER**